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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Appellant,

v.

RAYMOND STUART MARTIN,

Defendant and Respondent.

G055547

(Super. Ct. No. 17CF0745)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Steven D. Bromberg, Judge. Reversed.

Tony Rackauckas and Todd Spitzer, District Attorneys, and Holly M. Woesner, Deputy District Attorney, for Plaintiff and Appellant.

Kent D. Young, under appointment by the Court of Appeal, for Defendant and Respondent.

* * *

INTRODUCTION

Defendant Raymond Stuart Martin made a lane change without signaling. A police officer whose patrol car was directly behind defendant's vehicle stopped defendant for violating Vehicle Code section 22107 (section 22107). The trial court granted a motion to suppress evidence found during a subsequent search of defendant's vehicle. We reverse.

Section 22107 requires that a driver signal a lane change "in the event any other vehicle may be affected by the movement." It is the potential of the effect, not the existence of any actual effect, that results in a violation of section 22107. The police officer had at least a reasonable suspicion that defendant had violated section 22107; therefore, the vehicle stop and the subsequent search did not violate defendant's constitutional rights.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Santa Ana Police Officer Elias Martinez was in a marked patrol car at about 2:00 a.m. on March 23, 2017. Martinez was patrolling the area of First and Euclid Streets, "which is a known area for high crime with narcotics, gang crimes, assaults, so forth, and so on." Martinez saw defendant's vehicle exit a shopping center parking lot and make a left turn onto eastbound First Street. There was no other traffic on First Street at that time.

Martinez began to follow defendant's car. Defendant pulled into the left turn lane, in order to turn left at Euclid, without using his left turn signal. Martinez's patrol car was six to eight feet behind defendant's car when defendant made his lane change. Martinez could not recall having to slam on his brakes or swerve to avoid hitting defendant.

Martinez initiated a traffic stop because defendant made a lane change without signaling, in violation of section 22107. Martinez told defendant why he had

pulled him over and asked for his driver's license. Martinez asked whether defendant was on parole, and defendant admitted he was. Methamphetamine, a digital scale, and \$786 in cash were found in the vehicle during a parole search.

Defendant was charged in count 1 with possession of methamphetamine for sale (Health & Saf. Code, § 11378), and in count 2 with transportation of methamphetamine for sale (*id.*, § 11379, subd. (a)). The information alleged as sentencing enhancements: (1) count 1 was committed while defendant was released from custody on bail (Pen. Code, § 12022.1, subd. (b)); (2) defendant had four prison priors (*id.*, § 667.5, subd. (b)); and (3) defendant had suffered prior convictions for violating Health and Safety Code sections 11378 and 11379, subdivision (a) (*id.*, § 11370.2, subd. (c)). Defendant was never charged for the traffic violation.

Defendant filed a motion to suppress evidence. (Pen. Code, § 1538.5.) After holding an evidentiary hearing, the trial court granted the motion to suppress. The People then stated they were unable to proceed, and the trial court granted defendant's motion to dismiss. The People timely filed a notice of appeal.

DISCUSSION

We review the trial court's factual findings under the substantial evidence test. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140; *People v. Carmona* (2011) 195 Cal.App.4th 1385, 1389.) We review de novo the court's determination that the search and seizure were unreasonable. (*People v. Carter, supra*, at p. 1140; *People v. Carmona, supra*, at p. 1389.) "The Fourth Amendment's protection against unreasonable searches and seizures dictates that traffic stops must be supported by articulable facts giving rise to a reasonable suspicion that the driver or a passenger has violated the Vehicle Code or some other law." (*People v. Durazo* (2004) 124 Cal.App.4th 728, 731.) To establish a reasonable suspicion, "the detaining officer [must] point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective

manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

The violation for which defendant was originally stopped, section 22107, reads as follows: “No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.” (*Ibid.*) Another vehicle need not be actually affected by the lack of a signal in order for a violation of the statute to occur; the potential to affect another vehicle is sufficient. (*People v. Durant* (2012) 205 Cal.App.4th 57, 63.)

A violation of section 22107 occurs when another driver—which may include a police officer following the driver—is *or may be affected* by a turn or lane change made without signaling. In *People v. Logsdon* (2008) 164 Cal.App.4th 741 (*Logsdon*), the police officer saw the defendant pull out of a gas station and cross several lanes of traffic. (*Id.* at p. 743.) There was little or no other traffic on the street. (*Ibid.*) The officer pulled his patrol car behind the defendant and began following him. (*Ibid.*) The defendant then changed lanes without signaling, and the officer made a traffic stop due to the violation of section 22107. (*Ibid.*) The defendant’s motion to suppress was denied. (*Id.* at p. 744.)

The defendant argued, as does defendant here, that his lane change did not violate section 22107 “because there were no other cars that could possibly have been affected by it.” (*Logsdon, supra*, 164 Cal.App.4th at p. 744.) A panel of this court rejected the defendant’s argument because the police officer was directly behind the defendant, in the same lane and within 100 feet of the defendant, meaning that the officer was affected by the lane change. (*Ibid.*) Citing *People v. Miranda* (1993) 17 Cal.App.4th 917, 930, the appellate court in *Logsdon* held that the signal required by

section 22107 “is primarily aimed at vehicles behind the car making the lane change. *That even applies to a patrol car, irrespective of the lack of any other traffic.*” (*Logsdon, supra*, at p. 744, italics added, fn. omitted.) The *Logsdon* court also concluded that actual impact on another driver is not required to violate section 22107; “potential effect triggers the signal requirement.” (*Logsdon, supra*, at p. 745.)

In *People v. Suff* (2014) 58 Cal.4th 1013, a uniformed motorcycle officer observed a woman approach the defendant’s van, which was consistent with the description of a van involved in a series of killings of prostitutes in the area; the woman, however, turned and walked away when she saw the officer. (*Id.* at p. 1050.) As the van, which had been stopped, began to move, the officer decided to make contact with the driver to gather information. (*Id.* at pp. 1050-1051.) The van stopped at a red light, with the officer’s motorcycle immediately behind it. (*Id.* at p. 1051.) The van was ““positioned to go straight in the lane, . . . [a]nd then the van suddenly made a right turn without any kind of signals or moving over towards the curb.”” (*Ibid.*) The officer stopped the defendant for failing to signal the turn. (*Ibid.*) The officer discovered that the defendant’s driver’s license was suspended and the van’s registration was expired. (*Ibid.*) The van was impounded, and items linking the defendant to the serial killings were discovered during an inventory search. (*Id.* at pp. 1051-1052.)

The defendant argued that his motion to suppress should have been granted because the officer did not have a reasonable suspicion that a violation of section 22107 had occurred. (*People v. Suff, supra*, 58 Cal.4th at pp. 1052-1053.) The defendant attempted to distinguish *Logsdon* on the ground that because the officer “was *stopped* behind defendant’s van, the motorcycle could not have been affected by defendant’s turn.” (*Id.* at p. 1056.) The California Supreme Court rejected the defendant’s argument. As the court held, the officer “was clearly in a position to be affected by defendant’s turn; had [the officer] decided to proceed to the right of defendant’s van to make a right turn,

he would have done so without knowing that defendant was planning to turn right into the same path. [¶] In sum, defendant was required to signal that he was going to turn at the intersection, and his failure to do so justified [the] traffic stop. [Citation.] The officer was then authorized to require defendant to produce his driver's license and evidence of registration of his van. [Citation.] Upon determining that the registration of defendant's van had expired more than a year earlier, the officer was authorized to impound the van. [Citations.] Having impounded the vehicle, [the officer] was authorized to conduct an inventory 'aimed at securing or protecting the car and its contents.' [Citation.] For these reasons, we conclude the trial court did not err in denying defendant's motion to suppress the evidence obtained as a result of the traffic stop." (*Ibid.*)

In *People v. Miranda*, *supra*, 17 Cal.App.4th 917, the officer followed the defendant in a marked patrol car. (*Id.* at p. 921.) The officer stopped the defendant's car after she made a left turn without signaling. (*Ibid.*) The officer searched the car after confirming that the defendant was on probation and subject to probation searches. (*Id.* at p. 922.) A controlled substance was found during the search; the defendant's motion to suppress this evidence was denied. (*Ibid.*)

As the court stated in *People v. Miranda*: "Turning to the facts here, it is undisputed that [the officer] observed [the defendant] commit a moving traffic violation. Thereafter his conduct remained reasonably related to the duties incident to the stop, especially when [the defendant] informed him that her driver's license was suspended. Defendant does not claim otherwise. [¶] . . . [¶] Defendant notes that [the officer] did not testify that [the defendant]'s unsignalled left turn was actually unsafe or that there was any other traffic around. That [the defendant] might not have been driving in an obviously dangerous manner is irrelevant. Under Vehicle Code section 22107, the failure to properly signal where another 'may be affected by the movement' is *prima facie* unsafe, for it creates the possible danger the statute was designed to prevent. Moreover,

defendant is mistaken that there was no other traffic around. [The officer] was behind [the defendant], and the primary benefit of the signal requirement is for the vehicles to the rear of the signalling vehicle.” (*People v. Miranda, supra*, 17 Cal.App.4th at p. 930.)

People v. Carmona, supra, 195 Cal.App.4th 1385, on which the trial court relied in this case, is distinguishable. In that case, the police officer was driving southbound on Walnut Street in La Habra. (*Id.* at p. 1388.) The officer saw the defendant driving northbound on Walnut, approaching the officer from about 40 yards away. (*Ibid.*) The defendant made a right hand turn onto Olive Street without using a turn signal. (*Ibid.*) The officer initiated a traffic stop for violation of section 22107. (*Ibid.*) The defendant admitted he was on parole. (*Ibid.*) The defendant moved to suppress narcotics found during the ensuing search; the trial court denied the motion to suppress. (*Id.* at pp. 1388-1389.)

A panel of this court held that the defendant had been unlawfully stopped and detained because there was “no reasonable possibility” that the defendant had violated section 22107. (*People v. Carmona, supra*, 195 Cal.App.4th at p. 1390.) The arresting officer testified there were no other cars in the area, and he had not been affected by the defendant’s unsignaled turn. (*Ibid.*) “In conclusion, reading sections 22107 and 22108 together, a motorist must continuously signal during the last 100 feet traveled before turning, but only in the event other motorists may be affected. Because the evidence is undisputed the officer was not and could not have been affected by the turn and there were no other motorists on the road, no violation occurred. In the absence of a violation of a statute, other unlawful conduct, or questionable activity, no reasonably objective suspicion existed to justify the stop.” (*Id.* at p. 1394.)

Unlike *Logsdon*, *People v. Suff*, and *People v. Miranda*, in which the arresting officer was behind the defendant’s vehicle and therefore was per se potentially affected by the lack of a signal, in *People v. Carmona* the officer and the defendant were

driving in opposite directions when the defendant turned *away from* the officer's path of travel, and *not into or toward it*.

The trial court in this case granted the motion to suppress: “What I’m seeing here is we have a situation that in the police officer’s mind it’s a high crime area—I’ll give him that. That’s okay. Bad things happen over there. I know the area. It’s come up in cases before—so he’s going to keep an eye out. And that’s good police work. Nothing wrong with that. [¶] But what I’m seeing here, based on his testimony—that’s why I wanted to get a diagram to put it in a better perspective because I was a little confused as to all that. Now I’m not. It’s perfectly clear to me—it appears the officer created that situation, that he put himself into that spot, and now there is a lane change without a signal being made, and now he, in a sense, is a victim, so to speak. He’s the one that’s being impacted because he put himself into that mix. Nobody else around. Other than that, no one else would have been impacted. [¶] I think that’s distinguishable. If I’m reading it right from the testimony, that’s distinguishable from the case that you cited. It’s distinguishable from the [*Logsdon*] case, but more in line with the *Carmona* case. [¶] You see it’s a different direction than anything we’ve talked about so far, and the officer creates that situation and now cries foul. I don’t believe you can do that. The [Penal Code section] 1538.5 [motion] is granted.”

The trial court erred in granting the motion to suppress. The court’s ruling was based on its erroneous conclusion that a violation of section 22107 requires that the defendant’s unsignaled lane change has the potential to affect someone other than a peace officer who put him or herself into the position of being so affected. The authority is squarely contrary to this conclusion.

DISPOSITION

The order is reversed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.